

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

January 19, 2016

The Board of Agriculture, Trade and Consumer Protection (Board) met on January 19, 2016, at the Department of Agriculture, Trade and Consumer Protection (Department), 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by Wis.Stat. §19.84.

Call to Order

Board Chair Andy Diercks called the meeting to order at 10:05 a.m.

Members Present

Andy Diercks, Dennis Badtke, Miranda Leis, Nicole Hansen, Dean Strauss, Greg Zwald, Paul Palmby, Mark Schleitwiler, and Doug Wolf were present. None were absent.

Minutes

Motion

Nicole Hansen made a motion, seconded by Miranda Leis, to approve the December 16, 2015, Board minutes. Motion approved unanimously.

Election of Officers

The Board conducted its annual election of officers.

Board Chair

Andy Diercks nominated Miranda Leis for Board Chair. There were no additional nominations. Motion approved unanimously.

Vice-Chair

Nicole Hansen nominated Andy Diercks for Board Vice-Chair. There were no additional nominations. Motion approved unanimously.

Secretary

Dean Strauss nominated Dennis Badtke for Board Secretary. There were no additional nominations. Motion approved unanimously.

**ATCP 10 and 12 – Animal Disease Control and Movement;
Animal Markets, Dealers, and Truckers
(Final Draft)**

Dr. Paul McGraw, Division Administrator for the Division of Animal Health, presented the Final Draft for chs. ATCP 10 and 12, related to Animal Disease and Movement, and Animal Markets, Dealers, and Truckers.

The Division of Animal Health received feedback from veterinarians and industries regulated by the U.S. Department of Agriculture (USDA), as well as individuals licensed through the Division, that certain provisions in chs. ATCP 10 and 12 were unclear, or inconsistent with other rule provisions, related statute provisions, or federal regulations.

The proposed rule makes various modifications to provide flexibility, clarity, and consistency. The proposed rule makes the following modifications to these sections:

- Definitions and terms
- Disease testing and reporting
- Official individual identification
- Tuberculosis testing and control
- Bovine import tuberculosis requirements
- Certificates of veterinary inspection (CVI)
- Federally approved livestock marketing facility
- Application information
- Slaughter swine identification
- Equine infectious anemia
- Farm-raised deer (FRD)
- Fish farms
- Elephant imports
- Animal markets, dealers, and truckers
- Waivers
- Appendix B

The Department held a public hearing on December 21, 2015, in Madison with written comments accepted until December 28, 2015. One person attended the hearing but did not testify and no written comments were received.

The Final Draft reflects minor changes based on the Legislative Council Clearinghouse comments. Other changes were made based on discussions with USDA staff, other interested parties, and Division staff.

Motion

Dennis Badtke made a motion, seconded by Doug Wolf, to approve the Final Draft of chs. ATCP 10 and 12. Motion approved unanimously.

Animal Health—Year in Review Report

Dr. Paul McGraw, State Veterinarian and the Division Administrator of the Division of Animal Health, gave a powerpoint presentation to the Board, which included updates on several disease outbreaks that occurred within the last year.

The Division worked to secure a scrapie outbreak in a sheep herd located in Butternut, WI. Animal Health staff performed genetic testing on the remainder of the herd after one animal tested positive for scrapie. The herd did not show any resistance to the disease and was humanly depopulated to remove any threat of the disease spreading. One additional case was detected within the herd at slaughter.

In spring, the Division was notified by the Department of Health Services (DHS) that an immigrant worker on a dairy farm tested positive for bovine tuberculosis (TB). The Division worked quickly to test the 1,600 head dairy herd twice in the following 6 months to ensure that the rest of the herd was not infected.

Two deer farms in Wisconsin tested positive for chronic wasting disease (CWD) last year. One farm, located in Eau Claire County, had close to 230 whitetail deer that were depopulated after 33 deer tested positive for the disease. The other farm, a hunting preserve in Oneida County, remains under quarantine and the investigation is still underway. The Department worked closely with the USDA to conduct further research on the disease and the potential for collecting live samples in the future.

The state saw 4 cases of brucellosis canis in 2015, which is a disease that can affect several species of animal and humans. Two kennels were investigated and quarantined while testing was done. The disease, when specific to canines, can be spread by purchasing intact breeding animals without testing.

The Department reacted quickly to the avian influenza (AI) virus that hit Wisconsin in spring. The AI virus was first detected in Wisconsin at a commercial chicken flock in Jefferson County on Monday, April 13. Nine additional flocks were detected in Barron, Juneau, Chippewa and Jefferson counties bringing the total of birds affected to nearly 1.6 million in Wisconsin. The Division of Animal Health, Dr. McGraw, Dr. Darlene Konkle and the incident management team within the Department worked tirelessly alongside The National Guard, USDA, Wisconsin Emergency Management, the Department of Natural Resources and other state agencies to react and contain the virus.

Wisconsin Agricultural Statistics Services (WASS) Report

Greg Bussler, State Statistician, updated the Board on the following:

- Production Report

- In November, 2.35 billion pounds of milk were produced in Wisconsin.
 - Milk production in 23 major states totaled 15.6 billion pounds.
 - As of January 1, 2016, Wisconsin had 9,695 milk cow herds, down 386 herds since January 2015.
- Price Report
 - November price of \$18.20 per hundredweight of milk.
 - Price of corn sold for \$3.42 per bushel.
 - Soybean price sold for \$8.36 per bushel.
 - Alfalfa hay sold for \$93 per ton, down \$77 per ton since last year.
- December Hog Survey
 - On December 1, there were 320,000 hogs and pigs in Wisconsin. This is up 3% from the previous year.
 - Wisconsin's breeding herd increased 5% to 43,000 head.
 - 72,000 sows were farrowed during December 2014 to November 2015. The average pigs saved per litter was 9.35 for this period in Wisconsin.
- Highlights from the 2014 Census of Horticulture
 - Wisconsin's total floriculture, nursery and specialty crops generated \$231 million in sales in 2014. This is up 25.8% from 2009.
 - There were 833 producers in Wisconsin in 2014.
 - Sales value of Wisconsin cut Christmas trees ranked 5th in the nation, composing 4.4% of the total U.S. cut Christmas tree sales.
 - Annual bedding and garden plants had the largest increase in sales from 2009, up \$20.5 million to \$808.8 million in sales in 2014.
- Highlights from the 2015 Final Crop Production Report
 - Corn for grain – Total production is estimated at 492 million bushels. This is up 1% from 2014. Wisconsin's corn for grain yield is estimated at 164 bushels per acre, which is up 8 bushels per acre from 2014. This is the highest yield on record for Wisconsin. The average yield in 2015 for the United States is estimated at 168.4 bushels per acre.
 - Soybeans – Total production is estimated 92.6 million bushels, up 18% from 2014. Wisconsin soybean growers averaged 49.5 bushels per acre, which is up 4.5 bushels per acre from 2014. The average yield in 2015 for the United States is estimated at a record high of 48.0 bushels per acre.
 - Alfalfa and alfalfa mixtures – 2015 production in Wisconsin is estimated at 3.36 million tons, which is down 19% from 2014. Producers averaged 2.8 tons per acre.
 - Potatoes – Production is estimated at 27.5 million cwt, up 5% from 2014. Yield is estimated at 440 cwt, which is up 30 cwt per acre from 2014.
- Storage Capacity
 - Wisconsin on-farm storage capacity as of December 1, 2015, was 375 million bushels, which is unchanged from December 1, 2014.

- Wisconsin's 370 off-farm storage facilities have a storage capacity of 355 million bushels. This is 15 million bushels above the previous year.
- Crop Progress Annual Review
 - Temperatures from April to September were 0.9 degrees above normal, compared to 1.0 degrees below normal in 2014. The September temperature averaged 64.7 degrees F. This is the warmest September in 121 years of climate records.
 - Precipitation totals for April through September averaged 23.80 inches statewide. This was 1.37 inches above normal and 3.32 inches below the total for 2014.
- Other noteworthy items:
 - 2015 county estimates for corn and soybeans will be released on February 18. This data is used in calculating the payments farmers will receive for crop insurance.
 - The 2015 Wisconsin Agricultural Statistics books are now available online and in print copy.
 - WASS is currently conducting a Certified Organic Survey. Beginning February 26, WASS will start collecting data on the March Intentions Survey.

Human Resources Report

Alison Scherer, Human Resources Director for the Division of Management Services, provided a powerpoint handout to the Board summarizing recent Human Resources activities and plans for the upcoming year.

The report provided statistical data for 2015 staffing transaction volume, retirement, and resignations. In 2015, Human Resources promoted student awareness of job opportunities through in-classroom presentations at several UW System universities.

In the upcoming year, Human Resources will continue to integrate and adjust to the new payroll module of the STAR/People Soft project. The new system is web based and allows position and employee data to be electronically stored and transferred between agencies if an employee moves.

Food Safety Consolidation Report

Steve Ingham, Division Administrator within the Division of Food Safety, presented a report and powerpoint to the Board regarding the ongoing efforts to bring programs, previously regulated by DHS, to the Department effective July 1, 2016.

In early July, the Division of Food Safety will become the Division of Food and Recreational Safety, as it will be comprised of the Bureau of Food and Recreational Businesses and the Bureau of Meat and Poultry Businesses. Recreational licensing programs, such as hotels and other lodging establishments, pools and recreational water facilities, campgrounds, and recreational/educational camps, will then be regulated by the Division.

A group of 12 staff from DHS and the Department have served on a steering committee to direct the program transfers. The steering committee has been meeting bi-weekly for the past several months, first to identify tasks that must be done and work groups to address these tasks, and more recently, to plan and offer employee and local health department agent webinars, to plan a new bureau orientation program scheduled for April 26-28, 2016, and to review work group products.

Seven work groups have been busily preparing for the program transfer. These work groups are:

- 1) Human Resources
- 2) Field Staff Support
- 3) Office and Budget Support
- 4) Metrics
- 5) Electronic Information Management
- 6) Agent and Non-Agent Program Relations
- 7) Regulatory and Policy Foundations

The presentation also discussed the Bureau's plans for meeting nationally recognized regulatory program standards and ideas for developing a new licensing structure that reflects the diversity and breadth of today's food and recreational businesses.

ATCP 1—Administrative Orders and Contested Cases (Hearing Draft)

Karley Downing, Chief Legal Counsel within the Office of the Secretary, presented the Hearing Draft relating to the rule ch. ATCP 1 to the Board.

The proposed rule amends ch. ATCP 1, to allow division administrators or staff to issue most of the special orders under s. ATCP 1.03(2). This will allow for clarification of the Department Secretary's responsibility to hear any appeal of a special order under s. ATCP 1.06.

Currently, under s. ATCP 1.03(2), some types of orders may be issued by the Department's division administrators or staff, while others may only be issued by the Department's Secretary or designee. Generally, all of these orders may be appealed under s. ATCP 1.06.

The authority to grant or deny a request for hearing rests with the Secretary, under s. ATCP 1.06(3). The final decision maker for any contested case is either the Secretary, or a designee appointed by the Secretary, as defined in s. ATCP 1.01(13). If the Secretary, or his designee, is the only person who may issue many of the typical special orders of the Department, this precludes the Secretary from exercising appellate jurisdiction in any contested case hearing

where he or she has already signed the initial order. This is a specific duty of the Secretary, which should not be abrogated by rule. On the other hand, if the rule is amended, allowing special orders to be issued by the division administrator, the Secretary may then exercise the duty to oversee any division's action by granting and deciding a contested case hearing, if the special order is appealed.

Motion:

Dennis Badtke made a motion, seconded by Paul Palmby, to approve the Hearing Draft of ch. ATCP 1. Motion approved unanimously.

**ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 94, 105, 127, 134, 141–Technical Rule
(Hearing Draft)**

Karley Downing, Chief Legal Counsel, presented the chs. ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 94, 105, 127, 134, and 141 Hearing Draft to the Board.

The proposed rule makes technical changes (non-substantive or minor substantive changes) to the following administrative code chapters:

- Pesticide Product Restrictions
- Fertilizer and Pesticide Bulk Storage
- Commercial Feed
- Soil and Water Resource Management Program
- Wisconsin Food Code
- Fair Packaging and Labeling
- Selling Commodities by Weight, Measure or Count
- Weights & Measures
- Flammable, Combustible, and Hazardous Liquids
- Petroleum and Other Liquid Fuel Products
- Sales Below Cost
- Direct Marketing
- Residential Rental Practices
- Cherry Marketing Order

Motion

Andy Diercks made a motion, seconded by Dean Strauss, to approve the Hearing Draft of chs. ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 94, 105, 127, 134, and 141. Motion approved unanimously.

Board Member Reports

Dean Strauss– Dean congratulated the new officers elected to the Board. The dairy industry is looking a little slower than the past several years but Dean is thankful that they were able to sell a portion of their milk to increase their base. He is optimistic that 2016 will be profitable. Dean remarried on December 23.

Greg Zwald– Greg is concerned about the seed corn prices for next year as this year was not very profitable. Recently, Greg participated in a panel discussion as part of the Dairy Strong 2016: Partners in Progress three-day conference. The Dairy Business Association and U.S. Farmers and Ranchers Alliance panel discussion focused on food dialogues and sustainable farming.

Andy Diercks– Andy congratulated Miranda and Dennis on their new Board positions. Andy recently returned from visiting family for the holidays in Florida. After that, he attended the National Potato Council industry meeting in Las Vegas. Primary topics focused on genetically modified organisms (GMO), water resource challenges, and concerns about Idaho's forecasted potato production. With Idaho projecting an increase in potato production of 2% to 3%, the potato industry as a whole may experience losses.

Nicole Hansen– The Wisconsin State Cranberry Growers Association, along with other organizations, sponsored the 2016 Wisconsin Cranberry School, which starts on Monday, January 20. The school is comprised of a two day program with a wide range of topics for growers and those interested in cranberry production. The 2015 cranberry crop in Wisconsin produced close to the same volume as 2014 or even slightly less. This has independent cranberry growers fearing a price increase due to the short fruit supply. The industry is still seeing a large amount of concentrates, mostly from Ocean Spray.

Dennis Badtke– Land market values are showing a new trend. Going into 2016, the public has been balking at rents and land prices are not selling at asking prices. This may mean an interesting year for some lenders as they may have to go into their equity in real estate.

Doug Wolf- Doug congratulated the new officers elected to the Board and thanked Nicole for her service this past year as well. This winter Doug's meat processing facility, Driftless Meats & More, continued to grow and is looking to enter the e-commerce world to expand their retail options. Doug had a nice holiday season and is looking forward to 2016.

Miranda Leis- The organic industry has seen a lot of renewed interest from companies wishing to diversify their portfolios. This may have an impact on the land base and the industry could see more land parcels that have not been farmed conventionally being converted. The organic corn market softened this year due to the low import pressure. The dairy supply for Organic Valley continues to be strong with several farmers in the queue for the next several years. At home,

Miranda is focusing on the farm budget and thankful for the feed stockpile they were able to acquire.

Mark Schleitwiler- Mark enjoyed seeing family and friends over the holiday season and is looking forward to many new projects in 2016. BelGioioso's new waste water treatment plant will be fully operational within the next week, despite the harsh winter temperatures.

Paul Palmby- The vegetable industry overall had a great year and looks very stable going forward. Seneca Foods is now focusing on establishing contracts and working with farmers to determine their acreage for the upcoming year. Paul recently returned home after a sunny vacation in Hawaii.

Secretary's Report

The Department has seen an increase in the open records requests coming to the Agency. Chief Legal Counsel Karley Downing and the legal department have been reviewing these requests and the associated records. There is an increased effort to educate the public about their open records rights and the request process.

The Agrichemical Management Bureau worked with businesses and individuals that have been impacted by the fees or the delivery side of the agricultural clean-up program. The Bureau utilizes the "Rev-Ex" program to better track this information and detail the financial support structure of the program. The Bureau spoke with industry to discuss the services currently provided, future service changes, the costs to incur these changes, and other reasons to adjust fees.

A press release will soon announce that the Wisconsin Pollinator Protection Plan (Plan) has been posted to the agency website. The Plan was created as an educational resource for Wisconsin agricultural stakeholders interested in improving the health and habitat of managed and wild pollinators. The Plan, made in partnership with UW Madison, is a voluntary set of actions that improve the public understanding of pollinator health, issues, and actions that can affect pollinators, and increases communication among stakeholders groups, scientists, agencies, and non-governmental organizations.

The end of the year international export numbers will be officially available in February. Wisconsin moved up a slot in the rankings after the third quarter results were released. This highpoint may be short lived however as the US dollar, and other foreign currency, has devalued creating downward pressure on all exports. It is anticipated that Wisconsin, and the US as a whole, will likely not surpass their 2014 export numbers.

The Secretary and Deputy Secretary Jeff Lyon plan to attend the 9th Annual Wisconsin Agricultural Outlook Forum held on the UW Madison campus. Agricultural economists and commodity specialists from the UW Madison and UW Extension will discuss the financial health of Wisconsin agriculture and the outlook for the year to come.

In late January, the Secretary will travel to Phoenix, Arizona to attend the International Dairy Foods Association Dairy Forum 2016, where Holsum Dairies of Hilbert, Wisconsin will be awarded the Innovative Dairy Farmers of the Year Award. The Department was responsible for submitting the nomination for Holsum Dairies.

The National Association of State Departments of Agriculture (NASDA) celebrated their 100th year anniversary and will hold their Winter Policy Conference in Washington, DC. This will be an open opportunity for congressional members to dialogue with other participants and attendees. Topics will focus on Country of Origin Labeling (COOL), food safety rules, rollout and education. USDA Secretary, Tom Vilsack is anticipated to make remarks and the U.S. Environmental Protection Agency (EPA) will update the group on Waters of the U.S. (WOTUS) rule and other issues regarding water.

Future Schedule and Agenda Items

The Board is scheduled to meet March 22, 2016, in Madison.

Adjournment

By unanimous consent, the Board adjourned at approximately 1:42 p.m.

Miranda Leis, Board Chair

Dennis Badtke, Secretary